



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/05/01	Bill No:	AB 523
Tax:	Sales and Use	Author:	Matthews
Board Position:	Support	Related Bills:	AB 646 (Horton) AB 811 (Zettel) AB 1601 (Papan)

BILL SUMMARY

This bill would provide a sales and use tax exemption for sales of bronchodilators when sold to an individual.

ANALYSIS

Current Law

Under existing law, sales or use tax applies to all sales or purchases of tangible personal property, unless otherwise exempted or excluded from the computation of sales or use tax.

Existing law provides a number of exemptions and/or exclusions from the sales and use tax. For example, the sales and use tax law contains the following exemptions for “necessities of life”:

- food for consumption at home (Section 6359)
- prescription medicines (Section 6369)
- gas, electricity and water (Section 6353)
- “food” animals, such as cows, pigs and chickens, and “food” plants, such as asparagus, nut trees, and strawberry plants (Section 6358)

Under current law, sales of over-the-counter medicines are generally subject to tax. However, sales of over-the-counter medicines by a registered pharmacist pursuant to a prescription by a physician, dentist or podiatrist are exempt from sales and use tax under Section 6369 of the Sales and Use Tax Law. Therefore, over-the-counter sales of such items as aspirin, cough syrups, throat lozenges, as well as bronchodilators by a registered pharmacist are exempt from tax under existing law provided they are prescribed by a physician, dentist or podiatrist. In addition, sales of over-the-counter medicines to a health facility, such as a hospital, that are later furnished to patients in that facility pursuant to the order of a physician, are also exempt from tax under the prescription medicine exemption contained in Section 6369.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Proposed Law

This bill would add Section 6369.6 to the Sales and Use Tax Law to provide a sales and use tax exemption for sales of bronchodilators when sold to an individual.

The bill would become operative on the first day of the calendar quarter commencing more than 90 days from the date the bill is enacted.

Background

A measure to exempt sales and purchases of over-the-counter medicines, as specified, as well as incontinence supplies, was considered during the 1999 Legislative Session. That measure, AB 13 (Dickerson, et al.), failed to pass out of the Assembly Revenue and Taxation Committee. Another measure to exempt sales and purchases of over-the-counter medicines for internal use by persons 65 years of age or older, AB 2713 (Olberg), was considered in the 2000 Legislative Session. That measure was held under submission in the Assembly Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author. Its purpose is to provide a sales and use tax exemption for sales and purchases of bronchodilators. The author's office notes that these items are essentially necessities of life for the treatment of hay fever, asthma and emphysema, and the sale of these items should be exempt from tax as are other necessities of life. In addition, the author's office notes that, up until recently, bronchodilators could only be purchased through a prescription, and those purchases qualified for an exemption from tax through Revenue and Taxation Code Section 6369's prescription medicine exemption. Now that these items may be purchased over-the-counter, the author believes it is unfair that the sales tax now applies to the sale and purchase of bronchodilators.
2. **The April 5, 2001 amendments address an issue raised in the Board's previous analysis.** In the Board's previous analysis, a concern was raised that bronchodilators could be purchased by a family member, such as a mother purchasing a bronchodilator for her child, and the language in the introduced version could have precluded those transactions from the proposed exemption. These amendments address that concern.

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3. **Bill would not materially affect the Board's administration of the Sales and Use Tax Law.** From an administrative standpoint, the Board is already charged with the responsibility of verifying the numerous, and sometimes obscure, exemptions claimed under the Sales and Use Tax Law. Exempting the sale and purchase of bronchodilators would not materially affect the Board's workload.

COST ESTIMATE

Administrative costs would include providing notices to affected retailers, auditing claimed exemptions, and amending the Board's regulation. These costs are expected to be absorbable.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Bronchodilators are medicines that open up the bronchial tubes of the lungs. They are used to treat the symptoms of asthma, bronchitis, emphysema, and other lung diseases. They are also used in the treatment of allergies. There are two types of bronchodilators that are available without a prescription: epinephrine, which is taken by means of an inhaler, and ephedrine capsules, which are taken orally. These nonprescription medicines are not to be taken unless the patient has been diagnosed with an actual case of asthma. Sales of prescription medicines are currently exempt from the sales and use tax; only sales of nonprescription medicines are taxable.

The California Department of Health Services estimates that 1.8 million Californians have asthma. In a study done for the Asthma and Allergy Foundation of America, direct medical expenditures for asthma were estimated to amount to \$721 million annually in California. Of this amount, 40 percent, or \$288 million, was for prescription medication. We were unable to locate any information regarding expenditures for nonprescription asthma medication. As an estimate of the order of magnitude, if we assume that nonprescription asthma medication expenditures represent 5% of prescription medication expenditures, the expenditures would amount to \$14.4 million. (\$288 million x 5% = \$14.4 million). The sales and use tax revenue on these sales would amount to \$1.1 million.

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Revenue Summary

We cannot precisely determine the revenue impact from exempting nonprescription purchases of bronchodilators from the sales and use tax. However, as an estimate of the order of magnitude, if nonprescription purchases of bronchodilators amount to 5% of the sales of prescription asthma medication, then the annual revenue loss would be as follows:

	<u>Revenue Loss</u>
State loss (5.0%)**	\$0.7 million
Local loss (2.25%)	0.3 million
Transit loss (0.67%)	<u>0.1 million</u>
Total	<u>\$ 1.1 million</u>

**While the state tax rate is 4.75 percent for calendar year 2001, it is assumed the tax rate will return to 5.0 percent in 2002.

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